

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5606 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RAIBEN NATHABHAI

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR ND NANAVATI for Petitioner

MR HL JANI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The respondent No.2 appointed the petitioner as a Gardner in its office in the year 1966. The petitioner was given a fixed pay of Rs.30/- p.m. which was increased to Rs.45/p.m. under the office order dated 6.12.67, annexure 'A'. The petitioner further stated that the respondent No.2 was pleased to enhance the monthly fixed

pay of Rs.150/- to Rs.210/- with effect from 1.9.82. The petitioner has made a grievance that she has been appointed in the office of respondent No.2 on permanent post of Gardner which was carrying time scale of 196/232(R) at the relevant time, but she has been given only consolidated salary of Rs.30/- initially which has been enhanced from time to time and lastly it was made Rs.210/- which is highly arbitrary and unjustified. The respondent No.2 should have given her pay in the regular time scale on the post of Gardner on the principle of "equal pay for equal work". Further grievance has been made that the action of the respondent No.2 to continue her for all these years i.e. for about 30 years on the consolidated salary is highly arbitrary and unjustified.

2. None of the respondents have filed any reply to the petition. In absence of any reply to the petition, the averments made in the Special Civil Application stand uncontroverted. The learned counsel for the petitioner has contended that on the principle of "equal pay for equal work", the petitioner should have been given minimum of pay in the time scale of the said post, i.e. 196/232(R), with dearness allowance for reasonable time, and thereafter she should have been made permanent on the post with all benefits following therefrom. The learned counsel for the respondent, on the other hand is unable to give any justification to continue the petitioner for all these years on consolidated salary. The learned counsel for the respondent has raised the only objection that appropriate remedy for the petitioner would have been to file civil suit or to approach Labour Court where this matter could have been adjudicated and decided.

3. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

4. It is true that to decide the question of "equal pay for equal work", the petitioner has to establish many facts that she is working in full time and she has discharged identical duties which are discharged by class IV employees appointed in the said time scale. In the Special Civil Application also, the petitioner has not given out necessary facts for her entitlement to pay in the regular time scale on the post of Gardner, but the facts are there on record that she has been given consolidated salary which has been enhanced from time to time and the respondent has not disputed that the post of Gardner on which she was appointed is not a permanent post. It is also not case of the respondents that there is no permanent post of Gardner in the office of respondent No.2 nor any of the respondents have come up

with the case that any other person has been appointed on the said post. The respondents have not even taken any trouble to file the reply. It is true that initially, the burden to prove the case of "equal pay for equal work" does lie on the petitioner, but in the present case, I do not consider it to be in the fitness of the facts of the case to take too technical view in the matter. The petitioner is working since 1966 on a consolidated salary and this petition has been filed by her in the year 1983, i.e. after working for about 17 years on the consolidated salary. Though her claim cannot be accepted for time scale from the date of initial appointment, but at the same time it is highly arbitrary and unjustified and against the provisions of Article 14 and 21 of the Constitution not to consider the case of the petitioner to give her regular employment on the post of Gardner. To continue the petitioner for all these years on the consolidated salary is highly unjustified. It is in fact a case of taking away rights of the petitioner by respondent No.2. The respondent No.2 is a Gram Panchayat and being constitutional institution it should have taken care to see that a poor lady may at one point of time is given regular employment. Even if we presume and assume and accept for the sake of argument that the petitioner would have been taken on consolidated salary or on part-time employment, then also to continue her on part-time employment and not to take her in regular employment for all these years is in violation of Articles 14, 21 and 39 of the Constitution. A person who serves for 30 years in a constitutional institution and still her status is only of a part-time employee or an employee on consolidated salary. This would certainly deprive her from all future benefits and she will face great difficulties, hardships and inconvenience on reaching the age of superannuation. After serving such institution, it is expectation of each employee that the establishment will regularise his/her services and will make him/her permanent in service.

5. Taking into consideration the totality of the facts of the case, I am of the opinion that it is in the interest of justice and in consonance with the provisions of Articles 14, 21 and 39 of the Constitution to direct the respondent No.2 to consider the petitioner as permanent employee on the post of Gardner in the time scale of the said post from the date of filing of this Special Civil Application, i.e. from 23rd November 1983, or to round up the date, from 1st December 1983. The petitioner shall be entitled for fixation of her pay in the pay scale on the post of Gardner from 1st December 1983. She will be further entitled for yearly grade

increments, dearness allowance and all other allowances payable to the employees of Gram Panchayat, together with all other benefits. She will also be entitled for fixation of pay in the revised pay scale, if any, made after 1st December 1983. The respondent No.2 is directed to determine the amount of arrears of the fixation of pay of the petitioner in the time scale after giving her due increments and after giving benefits of revised pay scale, if any, made during this period, within a period of three months from the date of receipt of certified copy of this order. The amount of arrears so determined should be paid to the petitioner within a period of three months next thereafter. The petitioner is a low paid employee and has been unnecessarily dragged into litigation and as such, it is a fit case where the petitioner should be awarded costs also. Order accordingly. The respondents are directed to pay Rs.2,000/- by way of costs of this petition to the petitioner. Rule made absolute.

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(sunil)